

Jan 15, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

VERNE JAY MERRELL,
CHARLES HARRISON BARBEE,
ROBERT SHERMAN BERRY, and
BRIAN RATIGAN,

Defendants.

Nos. 2:96-CR-0257-WFN-1
2:96-CR-0258-WFN-1
2:96-CR-0259-WFN-1
2:97-CR-0066-WFN-1

ORDER SETTING SCHEDULE
FOR RESENTENCING

Upon review of the parties' briefing, the Court has determined that the Defendants shall be returned to the Eastern District of Washington to be resentenced in person. The Court has reviewed the Motions and the file and is fully informed. Accordingly,

IT IS ORDERED that:

1. Resentencing hearings shall be set as follows:

(a) 2:96-CR-0257-WFN-1: Verne Jay Merrell's resentencing hearing shall be held on **March 25, 2020, at 9:00 a.m., in Spokane**, Washington.

(b) 2:96-CR-0258-WFN-1: Charles Harrison Barbee's resentencing hearing shall be held on **March 24, 2020, at 9:00 a.m., in Spokane**, Washington.

(c) 2:96-CR-0259-WFN-1: Robert Sherman Berry's resentencing hearing shall be held on **March 18, 2020, at 9:00 a.m., in Spokane**, Washington.

(d) 2:97-CR-0066-WFN-1: Brian Ratigan's resentencing hearing shall be held on **March 17, 2020, at 9:00 a.m., in Spokane**, Washington.

2. The United States Marshals Service shall transport the Defendants to the Eastern District of Washington in a timely manner to appear for their resentencing hearings.

1 3. The United States Probation Office shall update the previously prepared
2 presentence investigation reports based on the recent rulings of the Court and any other
3 appropriate supplemental information.

4 (a) No later than **February 14, 2020**, the Probation officer shall disclose the
5 updated presentence investigation report to counsel. Within **14 days thereafter**, counsel
6 shall communicate in writing to the probation office any objections they may have. Such
7 communication must be conferred in writing to the Probation Officer and opposing counsel.

8 Objections shall be numbered and identify the paragraph(s) to which the
9 objection applies. Objections shall address the PSR in sequential order, beginning with the
10 lowest numbered paragraph.

11 (b) After receiving counsel's objections, the Probation Officer shall conduct any
12 further investigation and make any revisions to the presentence report that may be necessary.
13 The Probation Officer may require counsel for both parties to meet with the officer to discuss
14 unresolved factual and legal issues and counsel shall make themselves available for that
15 purpose.

16 (c) At least **10 days prior to the date of the sentencing hearing**, the Probation
17 Officer shall submit the presentence report to the sentencing judge. The report shall be
18 accompanied by an addendum setting forth any objections counsel may have made,
19 including those that have not been resolved, together with the officer's comments and
20 recommendations thereon. The Probation Officer shall certify that the contents of the report,
21 other than sentencing recommendations, including any revisions or addenda, have been
22 disclosed to counsel for the Defendant and the Government, and that the addendum fairly
23 states any remaining objections.

24 (d) Except with regard to any written objection made under sub-division (a), the
25 report of the presentence investigation and computations shall be accepted by the Court as
26 accurate. Upon a timely objection by the Defendant, the Government bears the burden of
27 proof on any fact that is necessary to establish the base offense level. The Court, however,
28 for good cause shown, may allow a new objection to be raised at any time before the

1 imposition of sentence. In resolving disputed issues of fact, the Court may consider any
2 reliable information presented by the Probation Officer, the Defendant, or the Government.

3 (e) Any memorandum or motion regarding sentencing must be filed and served
4 at least **15 days prior to the date set for sentencing**. The opposing party shall file and serve
5 a response, if any, within 7 days of receipt of the motion.

6 4. If counsel anticipates that a resentencing hearing will take more than an hour, they
7 are requested to notify Court staff so that the Court's calendar provides adequate time to
8 address resentencing issues.

9 The District Court Executive is directed to file this Order and provide copies to
10 counsel.

11 **DATED** this 15th day of January, 2020.

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13 _____
14 WM. FREMMING NIELSEN
15 SENIOR UNITED STATES DISTRICT JUDGE

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